

#### § 209.4

be interpreted as referring to the Administrator.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

#### § 209.4 Issuance of complaint.

If the complainant has reason to believe that a person has violated any provision of the Act or the regulations, he or she may institute a proceeding for the issuance of a remedial order by issuing a complaint.

#### § 209.5 Complaint.

(a) *Contents.* The complaint shall include (1) specific reference to each provision of the Act or regulations which respondent is alleged to have violated; (2) a brief statement of the factual basis for alleging each violation; (3) the proposed order issued under section 11(d) of the Act to remedy the violation, signed by the Assistant Administrator for Enforcement, with notice that the order shall be effective 20 days after service of the complaint unless respondent requests a hearing under § 209.6; (4) notice of respondent's right to request a hearing on any material fact or issue of law contained in the complaint, or on the appropriateness of the proposed order; and (5) a statement of whether the respondent must submit a remedial plan pursuant to § 209.8.

(b) *Amendment of the complaint.* At any time prior to the filing of an answer, the complainant may amend the complaint as a matter of right. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file an answer. At any time after the filing of an answer, the complaint may be amended upon motion granted by the administrative law judge.

(c) *Withdrawal of the complaint.* Where, on the basis of new information or evidence, the complainant concludes that no violation of the Act or the regulations has been committed by the respondent or that the issuance of the complaint was otherwise inappropriate, the complainant may withdraw the complaint without prejudice at any stage in the proceeding.

(d) *Service of complaint.* (1) Service of the complaint shall be made on the respondent personally (or on his or her

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representative), or by certified mail, return receipt requested.

(2) Service upon a domestic or foreign corporation or upon a partnership or another unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, return receipt requested, directed to an officer or partner, a managing or general agent, or any other agent authorized by appointment or by Federal or State law to receive service of process.

(3) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt.

#### § 209.6 Answer.

(a) *General.* Where respondent (1) contests any material fact alleged in the complaint to constitute a violation of the Act or regulations; or (2) contends that the remedial order proposed in the complaint is inappropriate to the violation; or (3) contends that he or she is entitled to judgment as a matter of law, he or she shall file a written answer with the complainant. Any answer must be filed with the complainant within twenty (20) days after service of the complaint. Initiation of informal conferences with the Agency under § 209.19 does not add to the twenty (20) day period. The time period in which to file an answer may be extended by the Administrator upon motion.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Whenever an allegation is denied, the answer shall state briefly the facts upon which the denial is based. The answer shall also state (1) whether a hearing is requested, (2) the facts respondent intends to place at issue, and (3) the circumstances or arguments which are alleged to constitute the grounds of defense.

(c) *Hearing upon the issues.* A hearing upon the issues raised by the complaint and answer shall be held upon written demand of respondent.

(d) *Failure to plead specifically.* A respondent's failure to plead specifically

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to any material factual allegation contained in the complaint shall constitute an admission of such allegation.

(e) *Amendment of the answer.* The respondent may amend the answer upon motion granted by the administrative law judge.

### § 209.7 Effective date of order in complaint.

(a) The order in the complaint is effective and binding on respondent 20 days after service of the complaint, unless respondent requests a hearing pursuant to § 209.6. If the respondent does not request a hearing, the order is then a final order of the Agency.

(b) Respondent may file a motion with the complainant to vacate the final order, reopen the proceedings and request a hearing after the order is effective. This motion must be filed within twenty (20) days after the effective date of the order. The motion shall state the reasons respondent failed to file a timely answer, and provide the information required by § 209.6(b). The Administrator may, in his or her discretion and for good cause shown, grant the motion.

### § 209.8 Submission of a remedial plan.

(a) The Administrator may require the respondent to submit a remedial plan. Notice of this requirement and the due date will be given in the complaint. If the respondent requests a hearing, the remedial plan required by the complaint need not be submitted. The final order may include a requirement that the respondent submit a remedial plan.

(b) A respondent may always submit a remedial plan voluntarily in pursuit of informal settlement.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

### § 209.9 Contents of a remedial plan.

(a) The Administrator will specify the requirements of the remedial plan. This may include, but is not limited to, the following information:

(1) A detailed description of the products covered by the remedial order, including the category and/or configuration if applicable, and the make, model year and model number, if applicable.

(2) A detailed description of the present location of the products, in-

cluding a list of those in possession of the products and, if necessary, how the respondent intends to contact the persons in possession and retrieve the products.

(3) Any appropriate remedies the respondent would propose as an alternative to the specific remedies proposed by the Administrator.

(4) A detailed plan for implementing the remedies, both those proposed by the Administrator and those proposed by the respondent.

(5) A detailed account of the costs of implementing each of the proposed plans.

(b) Remedial plans shall be submitted to Director, Noise Enforcement Division (EN-387), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

### § 209.10 Approval of plan, implementation.

(a) If the Administrator finds that the remedial plan is designed to remedy the noncompliance effectively, he or she will so notify the respondent in writing. If the remedial plan is not approved, the Administrator will provide the respondent with written notice of the disapproval and the reasons for the disapproval. The Administrator may give the respondent an opportunity to revise the plan, or the Administrator may revise the plan.

(b) The respondent shall commence implementation of the approved plan upon receipt of notice from the Administrator that the remedial plan has been approved, or revised by the Administrator and then approved.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

### § 209.11 Filing and service.

(a) After an answer containing a written demand for a hearing has been filed, an original and two copies of all documents or papers required or permitted to be filed under these rules of practice shall be filed with the hearing clerk.

(b) When a party files with the hearing clerk any pleadings, any additional issues for consideration at the hearing, or any written testimony, documents, papers, exhibits, or materials, proposed